IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.Nos.931,932, and 933 of 2004
and
Crl.M.P.Nos.6418 of 2004 and 10197 of 2004

1. S.Ranganathan (A3)
2. R.D.Rajendra Babu(A4) ..Petitioners in Crl.R.C.No.931/2004
Accused 3 & 4

1. S.Ranganathan(A2)
2. R.D.Rajendra Babu(A3) . Petitioners in Crl.R.C.No.932/2004
Accused 2 & 3

1.S.Ranganathan(A3)
2.R.D.Rajendra Babu(A4) .Petitioners in Crl.R.C.No.933/2004
Accused 3 & 4

vs.

Employees'State Insurance Corporation
rep.by its Manager
Vellore, Vellore District. .. Respondent in all the Revisions

Prayer: These Revision petitions have been preferred against judgment dated 18.05.2004 in C.A.Nos.7,8 and 6 of 2002 respectively passed by the Additional District & Sessions Judge, (FTC), Vellore, confirming the judgment made in C.C.Nos.295, 296 and 294 of 1994 respectively on the file of the Judicial Magistrate No.I, Vellore, dated 17.1.2002.

For Petitioners : Mr.K.A.Ravindran (all Revisions)

For Respondent : Mr.K.C.Ramalingam(all Revisions)

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COMMON ORDER

These revision petitions have been preferred against the judgment in C.A.Nos.7,8 and 6 of 2002 respectively passed by the learned Additional Sessions Judge, (FTC) Vellore, which had arisen out of the judgment in C.C.Nos.295, 296 and 294 of 1994 respectively on the file of the Judicial Magistrate NO.I, Vellore.

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A3 and A4 in C.C.No.295/1994 are the appellants in C.A.No.7 of 2002, A2 and A3 in C.C.No.296/1994 are the appellants in C.A.No.8 of 2002 and A3 and A4 in C.C.No.294 of 2004 are the appellants in C .A.No. 6 of 2002. The revision petitioners along with the co-accused have been charged under Section 85(a)of the Employees' State Insurance Act,1948 for having violated the provisions contemplated under Section 40(1) of the E.S.I.Act r/w Rule 31 of the Employees State Insurance Act under which they bound to collect the E.S.I.contribution from the employees and to remit the same with the E.S.I.Corporation Fund.

2. P.W.1 Thiru Kumar, the Inspector of E.S.I.Corporation, Vellore, while conducting an inspection of A1 spinning Mill on 14.12.1993, it was brought to light that for the period from April 1993 to September 1993 on behalf of the A1 spinning Mill, the E.S.I.Contribution collected from the employees of A1 Spinning Mill were not remitted with the E.S.I. Corporation Fund, thereby contravening the provisions under Section 41 of E.S.I.Act r/w 31 of State Insurance Act punishable under Section 85(a) of the E.S.I.Act. After taking cognizance, the learned Judicial Magistrate No.1, Vellore had taken the complaint on file as C.C.Nos.295, 296 and 294 of 2004 respectively and issued summons to the accused on their appearance, copies under Section 207 Cr.P.C. were furnished to the accused when the charges were explained to the accused, they pleaded not guilty.

3. Before the trial Court P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.13 were exhibited.

4. C.C.No.295 of 1994: P.W.1 in his evidence would state that he conducted an inspection of A1 Spinning Mill on 14.12.1993 and it came to light that the accused have failed to remit the E.S.I.Contribution collected from the employees to the tune of Rs.66,302/- along with the share of the employees,it comes to the tune of Rs.1,76,117/34ps, totalling a sum of Rs.22,42,419/34ps that being the E.S.I.Corporation relating to the period from July 1993 to September 1993. In C.C.No.296 of 2004, the accused have failed to remit the E.S.I.Contribution collected from the employees to the tune of Rs.6,06,970 being the E.S.I Contribution collected from the employees for the period from April 1993 to November 1993 except June 1993 and in C.C.No.294 of 2004, the accused have failed to pay E.S.I.Contribution collected from the employees to the tune of Rs.47,666/30ps for the month of April and May 1993 and A1 spinning Mill contribution to the tune of Rs.1,83,019/- totalling, a sum of Rs.2,30,685/30ps.

4a. P.W.2 is the Superintendent in E.S.I.Hospital. He has also accompanied P.W.1 during the inspection of A1 Spinning Mill and has also checked the registers maintained in the Mill for the

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period from July 1993 to September 1993 which revealed that the E.S.I.Contribution collected from the employees by the employer were not remitted with the E.S.I.Corporation along with the share of the Mill. Ex P2 is his report. After getting necessary sanction for prosecution Exs P3 and P4 from the Directors of the E.S.I.Corporation, he has preferred a complaint against the accused . Form C6 is ExP5 relating to A1 Spinning Mill. Ex P7 is the show cause notice issued to the accused by P.W.2. The letter written by the Director to the accused dated 31.1.1994 under Form D is Ex P8.Ex P9 is the acknowledgment for having received the original of Ex P8 by A1. Ex P10 is the reply notice dated 12.2.1994. Ex P11 is the letter of reminder sent by the Director of E.S.I. Corporation to the accused requesting the accused to deposit the arrears of E.S.I.Contribution immediately. Ex P12 is the final order passed by the Director of E.S.I.Corporation in this regard. Ex P13 is the authorisation letter given on behalf of the A1 Spinning Mill to A4. According to P.W.2, A2 was acting as a Managing Director for A1 Spinning Mill from July 1993 to September 1993. A3 was the Manager of A1 Spinning Mill during the relevant period. A4 was the Administrative Officer of A1 Spinning Mill during that time. Exs P1 to P13 were exhibited in C.C.No.294 of 2004.

4b. P.W.3 is the Superintendent of E.S.I.Corporation working in the Regional Director's Office , Chennai. After perusing Ex P1 to P3 reports received from P.W.1, the same were forwarded to the Regional Officer for his perusal. After perusing Ex P5 and Ex P6, show cause Notices issued to the accused under the original of Ex P7 and ExP8. Ex P9 is the acknowledgment for having received the original of Ex P7 and ExP8.Ex P.10 is the reply dated 12.2.2004 from A1 Spinning Mill. Ex P3 is the letter of sanction to prosecute A1 Spinning Mill.

5. C.C.No.296 of 2004: P.W.2 would depose that A2 in C.C.No.296 of 2004 Mr.R.Ranganathan was the Manager and A3 R.D.Rajendra Babu was Administrative Officer of A1 Spinning Mill and that he had conducted an inspection on 24.12.2993 in A1's Spinning Mill and it came to light that during April 199, May 1993 , July 1993, August 1993 and September 1993, the E.S.I.Contribution collected from the employees of A1 Spinning Mill were not remitted with the E.S.I.Corporation. Ex P2 is the report prepared by him. ExP3 is the order of sanction for prosecuting A1. Ex P5 is the show cause notice and under Ex P6, Form C-19, A3 permitted to remit the arrears of E.S.I.Contribution.

5a. P.W.3 would depose that Ex P8 register is relating to A1 Spinning Mill and that Exs P10 and P11 are the show cause notices received by the accused under Ex P12 acknowledgment . Ex P13 is the reply notice.

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6. C.C.No.294 of 2004: P.W.2 would depose that on 24.12.1993, an inspection was conducted by him along with P.W.1 and it was brought to light that during April 1993, and May 1993, the accused have failed to remit the E.S.I.Contribution collected from their employees . Ex P2 is the statement prepared by him on 24.12.1993. Ex P3 is the sanction order for prosecution and that he has preferred a complaint under Section 85(a) of the E.S.I. Act against the accused.

6a. P.W.3 would state that Ex P5 is the C6 register. Ex P6 is page 36 in Ex P5 register maintained in A1 Spinning Mill. Ex P7 and Ex P8 are the show cause notices. Ex P9 is the acknowledgment. Ex P10 is the reply notice.

7. On the basis of the above said evidence, when incriminating circumstances were put to the accused, the accused would deny their complicity with the crime. The Administrator of A1 Spinning Mill was examined as D.W.1 on the side of the accused. Exs D1 to D7 are the xerox copies of G.Os and Ex D8 is the bye-law and under Ex D9 G.O. Dated 1.3.1994 relating to A2 showing that he has joined as Adminstrator in A1 Spinning Mill on 24.12.1993 and that he was relieved on 28.2.1994 under Ex D10 and that he retired from service on 31.4.1994. Ex D11 is the order of the Government to take disciplinary proceedings against A2. According to him, the entire amount due to E.S.I. Corporation has been remitted with E.S.I. Corporation even before the filing of the complaint. In the same line, D.W.1 has deposed in C.C.No.294 of 2004 and C.C.No.296 of 2004 .

8.After going through both oral and documentary evidence let in by both sides, through D.W.1, the learned Trial Judge has come to a conclusion that an offence under Section 41 of E.S.I.Act r/w 31 of Employees State Insurance Act being committed by the accused warranting conviction under Section 85(a) of E.S.I.Act and accordingly convicted the accused to under go 6 months rigorous imprisonment each and slapped a fine of Rs.5,000/- each with default sentence.

8a. Aggrieved by the findings of the learned trial Judge , A3 and A4 have preferred an appeal in C.A.No.7 of 2002, A2 and A3 have preferred an appeal in C.A.No.8 of 2002 and A3 and A4 have preferred an appeal in C.A.No.6 of 2002 respectively before the Additional District and Sessions Judge(Fast Track Court) Vellore. After scanning the entire evidence both oral and documentary and also after hearing the learned counsels appearing for the appellants as well as the respondent, the learned first appellate Judge has come to a conclusion that the complainant has proved the guilt of the accused beyond any reasonable doubt and accordingly

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dismissed the appeal thereby confirming the Judgment of the trial Court which necessitated A3 and A4 to file Crl.R.C.No.931 of 2004, A2 and A3 have filed Crl.R.C.No.932 of 2004 and A3 and A4 have filed Crl.R.C.No.933 of 2004.

9. Now the point for determination in these revision petitions is whether the findings of the first appellate Judge in C.A.Nos.7,8 and 6 of 2002 respectively are liable to be set aside for the reasons stated in the grounds of revisions?

10. Heard Mr.K.A.Ravindran, learned counsel appearing for the revision petitioners and Mr. K.C.Ramalingam, learned counsel appearing for the respondent.

11. When these revision petitions were taken up for hearing, the learned counsel appearing for the revision petitioners would represent that even before the learned Judicial Judge took cognizance of the complaint preferred by the complainant, the entire arrears of E.S.I.Contribution were paid by the accused to the E.S.I.Corporation as evidenced under Ex D12 series. The learned counsel appearing for the respondent E.S.I.Corporation also admits the above said fact.

12. As per G.O.No.139 dated 5.7.1995, A1, North Arcot District Cooperative Spinning Mills, Ariyur, Vellore District has been declared as a sick Unit by the Government. The learned counsel appearing for the revision petitioners would contend that now the mill has been closed. It is seen from the records that the complaint filed by the complainant before the Court on 26.7.1994. But it is seen from Ex D12 that the arrears of contribution were paid by the accused only on the next day ie., on 27.7.1994. Under such circumstances, it cannot be said that even before taking cognizance of the offence by the Magistrate, the accused have deposited the arrears of E.S.I.Contribution. Taking into consideration, the subsequent payment of arrears of contribution by the accused and also the fact that A1 spinning Mill is a Sick Unit declared by the Government as per Ex D1 and also representation made by the learned counsel appearing for the revision petitioners that A1 spinning Mill has been closed now, I am of the view that while confirming the conviction, the sentence alone can be modified to that of "till the rising of the Court" instead of 6 months RI, while confirming the fine imposed by the trial Court. The point is answered accordingly.

13. In the result, the revision petitions are allowed in part and the conviction against the revision petitioners/A3 and A4 inC.A.No.7 of 2002, revision petitioners/A2 and A3 in C.A.No.8 of 2002 and revision petitioners/A3 and A4 in C.A.No.6 of 2002 respectively on the file of the Additional District and Sessions

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Judge, FTC, Vellore, is confirmed and the sentence alone is modified to the effect "till the raising of the Court " instead of 6 months RI. The revision petitioners/accused in all revision petitions shall appear before Judicial Magistrate No.I, Vellore, Vellore District on 27.6.2007 at 10.30 a.m. to serve out the sentence. The fine imposed by the trial Court, which was confirmed by the first appellate Court, is hereby confirmed. Consequently, connected Crl.M.P.Nos. 6418 of 2004 and10197/2004 are closed.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.I, Vellore.

2.The Chief Judicial Magistrate, Vellore.

3.The Additional District & Sessions Judge,
(FTC), Vellore.
4.The District & Sessions Judge, Vellore.

+ 3 ccs to Mr. K. C. Ramalingam, Advocate SR No. 34780 to 34782

+ 3 ccs to Mr. K. A. Ravindran, Advocate SR No. 34303 to 34305

Crl.R.C.Nos.931 to 933/2004

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